

**BEFORE THE STATE BOARD OF MEDIATION
STATE OF MISSOURI**

GOLDEN VALLEY REGISTERED NURSES)	
ASSOCIATION,)	
)	
Petitioner,)	
)	
v.)	Public Case No. 102
)	
GOLDEN VALLEY MEMORIAL HOSPITAL,)	
)	
Respondent.)	

**FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND DECISION**

BACKGROUND OF THE CASE

This case came before the State Board of Mediation upon the filing of a petition by the Golden Valley Registered Nurses Association for certification as the exclusive representative of certain registered professional nurses employed by the Nursing Services Department of the Golden Valley Memorial Hospital District (Employer), located in Henry County, Missouri. The original hearings in this case were held on April 23 and May 10, 1975. The Board issued its decision on August 20, 1975. In Golden Valley Memorial Hospital District v. Missouri State Board of Mediation, 559 S.W.2d 581 (Mo. App. 1977). The court remanded the case and directed the Board to resolve the issue of the supervisory status of nursing personnel. The case was reopened with hearings on April 28 and June 12, 1978. Representatives of the Association and Employer appeared at the hearings. Upon agreement by the parties, the case was heard by Michael Horn, then Chairman of the State Board of Mediation. Mr. Horn submitted the case by transcript to Conrad Berry, the present Chairman of the State

Board, Robert Missey and Stanley Cox. The State Board issued its Findings of Fact, Conclusions of Law and Decision on August 20, 1979 and directed that an election be conducted. Prior to the election, the Employer filed an Alternative Writ of Mandamus in the Circuit Court of Cole County. The Employer contended that the State Board's decision did not comply with the order of remand following the Golden Valley decision, supra. On November 6, 1979, Judge Kinder issued a "Final Judgment and Peremptory Writ of Mandamus." The court ordered the State Board to withdraw its decision of August 20, 1979 and to issue a new decision which would decide, in separate and complete findings of fact and conclusions of law, all of the issues raised by the parties in Public Case No. 102. Since the issuance of the Writ of Mandamus, Mr. Cox who participated in the decision of August 20, 1979 has died. Therefore, the present decision is signed by the Chairman Berry and Mr. Missey.

JURISDICTIONAL STATEMENT

The State Board of Mediation is authorized to hear and decide issues as to the appropriateness of bargaining units, by virtue of Section 105.525, RSMo 1978. At all of the hearings in Public Case No. 102 the parties were given full opportunities to present evidence. The Board, after a careful review of all of the evidence, sets forth the following findings of fact and conclusions of law.

FINDINGS OF FACT

The Golden Valley Memorial Hospital District employs approximately 300 persons. There are 162 persons employed in Nursing Services Department. Of the 162 nursing services employees, approximately 26 are registered nurses (RNs). The director of nursing heads the department, followed in authority by the assistant director of nursing. The hospital operates on a 24-hour basis with three eight-hour shifts. Each

shift is headed by a house supervisor. There are three house supervisors and two relief house supervisors. All of the above-mentioned employees are registered nurses. The Nursing Services Department consists of six functioning units. Those units and the RNs employed in each are as follows:

- (1) the medical-surgical unit --- two head nurses, eight staff nurses;
- (2) the operating room --- one head nurse with the title of O.R. supervisor, one assistant surgery supervisor, and one circulating nurse;
- (3) the recovery room --- one head nurse;
- (4) the emergency room --- one head nurse;
- (5) the intensive care unit --- one head nurse, one assistant head nurse, and one staff nurse;
- (6) the obstetrical unit --- one head nurse with the title of O.B. supervisor.

The Association asserts that all nursing positions below that of the director of nursing are employees within the meaning of Section 105.510, RSMo 1978, and have a community of interest which justifies their inclusion in the same bargaining unit. The Employer contends that a number of the RNs employed by the hospital are supervisors that should be excluded from the bargaining unit. A description of the duties of the disputed employee positions and the units in which they work is set out below.

Assistant Director of Nursing

The assistant director of nursing is a salaried employee who reports directly to the director of nursing. Second in command only to the director, the assistant director of nursing has the authority to assist the director in establishing hospital policies and procedures. As a member of the administrative team, the assistant director coordinates patient care activities for all shifts. The assistant director is authorized to aid the director in the hiring, promotion and firing of employees.

The assistant director develops continuing education programs for employees and assists the head nurses with personnel problems.

House Supervisor

Three RNs are employed as house supervisors, one assigned to each shift. The house supervisor functions as a liaison between the nursing service administration and nursing personnel and is in charge of the nursing department. The house supervisor has no authority to recommend the hiring of employees. While on duty, the house supervisor checks on staffing, makes rounds with doctors, prepares meals for late arriving patients, and work in any department that is understaffed. The house supervisor is in charge of any RN working on her shift, and has the authority to verbally reprimand employees.

The record indicates that should a discipline problem arise, the house supervisor discusses the problem with the employee and then brings the incident to the attention of the director of nursing, either by verbal or written report. The director of nursing has final authority concerning whether any disciplinary action should be taken.

Relief House Supervisor

Two RNs work as relief house supervisors and staff nurses. Neither relief house supervisors nor staff nurses have the authority to recommend the hiring of employees. One relief house supervisor testified that a relief house supervisor would serve as a house supervisor approximately two days a week, usually on weekends. A relief house supervisor, while serving as house supervisor is in charge of any RNs working her shift, has the authority to verbally reprimand them and may issue employee reports. The record indicates that on at least one occasion the relief house supervisor recommended that a RN be suspended. The RN was suspended after repeated absences. The record indicates that should a disciplinary problem arise, the relief house supervisor would

discuss the problem with the employee and bring the incident to the attention of the director of nursing. The director has the final authority to suspend or discharge an employee.

One RN testified that in her capacity as staff nurse, she would be supervised by the house supervisor assigned the RN to a particular floor. The staff nurse is usually in charge of two to three LPNs, five or six nurses aides, and four ward clerks. Her responsibilities as staff nurse include insuring that the work assistance of non-professional employees is done properly, and that may become necessary. The staff nurse has the authority to verbally reprimand non-professional employees and to issue employee report forms when necessary.

Third Floor Post-op Surgical Unit

The post-op surgical unit located on the third floor operates in three shifts, 24 hours a day. The unit has the capacity to care for approximately 44 patients. The day shift of the unit is staffed by the head nurse, one additional RN, four LPNs, ten nurses aides, and two ward clerks. The evening and night shifts are similarly organized except that usually only one RN is on duty at night shift with approximately two to three LPNs, seven nurses aides and one clerk. A total of one head nurse and four staff nurses are assigned to the third floor. The floor is operated on a team nursing basis. During the day shift, the head nurse appoints an LPN and an RN as team leaders. Occasionally the head nurse acts as team leader. Each team leader is in charge of four nurses aides and each team is responsible for the patient care for either the east or west wing of the third floor. The ward clerks of each shift are not a part of the nursing team but instead report directly to the supervisor of ward clerks. However, when the supervisor of ward clerks is not on duty, the clerk will report to the head nurse or house supervisor.

The head nurse testified that she devotes approximately 75% of her time to routine nursing functions. She sees that patients are prepared to go to surgery, does IV therapy, changes dressings, gives baths and enemas, and makes morning rounds with doctors. In addition, the head nurse performs a variety of clerical and administrative duties. The head nurse makes out the monthly schedule, posting a copy in her department and filing another copy in the office of the director of nursing. An employee seeking a vacation or leave of absence would first go to the head nurse, who would approve or disapprove the request and then forward it to the office of the director of nursing. The approval of the head nurse is an indication that the floor can be adequately staffed on the particular days the employee seeks leave. The head nurse testified that leave requests would normally be granted if an adequate staff was available.

The head nurse is involved in the disciplining of certain employees but has no authority to discharge employees in her unit. She verbally reprimands individuals and, in more severe cases, may issue employee reports known as "yellow sheets." The yellow sheet contains a check list of disciplinary problems such as excessive tardiness, unexcused absences, insubordination, etc. The head nurse checks the appropriate box on the form and sets out the facts precipitating the report. The report is signed by the head nurse, the employee involved, and the director of nursing. Once completed, the form becomes a part of the employee's record. The head nurse testified that employees will not be terminated unless they receive three to four such employee reports. In two years of employment the head nurse testified, she had prepared yellow sheets for only two employees. The head nurse also testified that she orally recommended to the director of nursing that a nurses aide be terminated. The aide was terminated after several such requests.

The head nurse has no authority to permanently transfer an employee from one floor to another, but, on one occasion, successfully recommended that an employee be so transferred. The head nurse has no authority to temporarily transfer employees from or to assign them to her floor. Rather, she must call the house supervisor to request additional personnel. The house supervisor and director of nursing has the authority to transfer employees already assigned to the post-op surgical unit to work in other departments irrespective of the head nurse's objections.

The head nurse periodically evaluates employees of the post-op surgical unit. Each new employee is subject to a 90-day probationary period. Although the record is not clear, it appears that the evaluation given by the head nurse has some bearing as to whether the probationary employee will be retained as a permanent employee. After 90-day evaluation, a six-month evaluation is given, followed by annual evaluations. The head nurse fills out a form with categories ranging from "requires improvement to "excellent" for various areas of work. The forms also provide a space for the head nurse's comments. The head nurse may recommend a pay increase on the evaluation form. On at least one occasion, the evidence established the recommendation for the pay increase was followed.

Second Floor Unit

The second floor of the hospital is organized similarly to the third floor post-op unit. The second floor operates on a three shift, 24-hour basis. The day shift is staffed by a head nurse, two additional staff nurses, five LPNs, ten nurses aides, and two ward clerks. The evening shift employs two staff nurses, five LPNs, ten nurses aides and two ward clerks. The night shift is staffed by three LPNs, nine nurses aides, and a ward clerk. There is little direct evidence concerning the duties of those employees working on the second floor. However, the record as a whole indicates that, the operation of the

second floor is comparable to the third floor and that each RN has generally the same responsibilities as those described above in the discussion of the third floor unit.

Operating Room Unit

The operating room unit staff works the day shift. The staff consists of three registered nurses, two LPNs and approximately six scrub technicians. The recovery room, which is a portion of the operating room unit, is staffed by one RN and two nurses' aides.

One of the operating room RN's serves as O.R. supervisor or surgery supervisor; one serves as assistant surgery supervisor; and one serves as circulating nurse in surgery.

The O.R. supervisor is directly accountable to the director of nursing and the chiefs of surgery. She is responsible for preparing time schedules and assigning RN's to the operating rooms as necessary. Once an RN is assigned to an operating room, she is not directly supervised by the O.R. supervisor. The O.R. supervisor orders supplies for the operating room and computes operating room charges to be included on patients' bills. The O.R. supervisor is in charge of the recovery room.

The O.R. supervisor has the authority to verbally reprimand an employee or to issue a written report on that employee. The evidence indicates that an O.R. supervisor has never recommended that an employee be discharged or transferred from her unit. She periodically evaluates recovery room employees in the same manner as other head nurses in the hospital. Similarly, the O.R. supervisor initially approves any leave or vacation requests sent to the Director of Nursing. There is some dispute in the record concerning whether a recovery room head nurse had been hired as a result of a recommendation by the O.R. supervisor. The Board finds that the recommendation of a physician was the decisive factor in the hiring of that employee.

The circulating nurse in surgery is assigned a number of cases by the O.R. supervisor and is directly responsible to the O.R. supervisor. The circulating nurse sets up the operating room, prepares a patient for surgery and assists the physicians during the course of the operation by opening supplies. She is in charge of the scrub technician, an orderly and a nurse's aide during the operation. After surgery, the circulating nurse transfers the patient to a recovery room. The record establishes that the circulating nurse has no authority to effectively recommend the hiring and firing of unit employees although one circulating nurse testified that she felt she could effectively recommend the transfer of non-professional employees under her. The record as a whole indicates that such transfer would occur only after someone with more authority such as the director of nursing made an independent determination concerning the desirability of such transfer.

When no surgeries are scheduled, the RN's in the operating room unit are assigned to other floors on a rotational basis by the house supervisor. However, the O.R. supervisor is usually not assigned to another floor if another RN is available. In the event that an O.R. supervisor is assigned to another floor, she provides basic patient care and works as a member of the nursing team on that floor.

Emergency Room

The emergency room operates on a three-shift, 24-hour basis. The head nurse, an RN, is responsible for the overall operation of the unit. The staff also includes one LPN, three registered emergency medical technicians, and nine mobile emergency medical technicians. Three to four non-professional employees are assigned to each shift. The head nurse works only one shift and is not available to directly oversee the remaining two shifts. The head nurse provides patient care and is responsible for ordering all equipment used in the emergency room. The head nurse spends the

majority of her time performing normal nursing functions. She starts IVs, gives medications, administers blood, and assists the physician as needed. She often provides such services while riding in the ambulance.

The emergency room head nurse also has administrative duties which constitute approximately 15% of her time spent on the job. Those duties include preparing a monthly work schedule, reporting absences, calculating time cards, and insuring that each shift is properly staffed. As in the other hospital units, include preparing a monthly work schedule, reporting absences, calculating time cards, and insuring that each shift is properly staffed. As in the other hospital units, employees seeking time off or vacations will first seek the approval of the emergency head nurse. Leave requests are normally granted if the emergency room can be adequately staffed during the requested time period. The final decision is made by the director of nursing. The head nurse conducts in-service training of the non-professional employees and prepares separation papers when recovery room employees are discharged or resign. (A duty we assume common to all head nurses.) Also, the emergency room head nurse, along with the head nurses of the other hospital units, sits in on annual budget sessions with the director of nursing and the hospital administrator. There is no evidence that the emergency room head nurse has the authority to make policy recommendations at such meetings.

The emergency room head nurse does not have the authority to recommend the hiring and firing of employees. The only input she has concerning hiring involves the recommendation of whether a probationary employee should be retained. There is no evidence concerning the weight given such recommendations. At the hearing much was made of the fact that the emergency room head nurse had on one occasion recommended that a certain employee be hired and that her recommendation was

followed. However, the record as a whole indicates that, as a general rule, the head nurse plays no significant role in the hiring process. As the highest ranking employee of the emergency room, the head nurse has some authority to discipline other employees. The head nurse often responds to rule infractions with oral reprimands. Serious discipline problems can result in the head nurse issuing an employee report (described in more detail on page 5 of this opinion) which permits the head nurse to recommend a short term suspension probation, or discharge. A worker with recurring disciplinary problems will be typically be orally reprimanded by the director and assistant director of nursing as well as the head nurse. In one case the emergency room head nurse was asked to fill out an employee form on an employee after the director of nursing had asked for the employee's resignation. In that report the head nurse made a formal recommendation that the employee be discharged. She provided documentation of the reasons for the firing of the employee. This episode indicates that although the head nurse can, at least in theory, recommend that an employee be discharged, the discharge often is a matter solely in the hands of the director and assistant director of nursing.

Intensive Care Unit

The intensive care unit operates on a three-shift 24-hour basis. Two registered nurses, the assistant head nurse and a staff nurse work the day shift, the head nurse works the evening shift, and a staff nurse works the night shift. Each shift has approximately three LPNs and one nurses aide. Testimony of one nurse who had worked at all three RN positions --- head nurse, assistant head nurse, and staff nurse --- established that there is no material difference in the duties of the intensive care nursing positions. Because of the serious condition of the patients in the intensive care unit, the nurses main duties are related to the care of the patients. Very little time is spent with

administrative duties, except for the routine scheduling chores, evaluation reports, etc. Given the small number of non-professional employees in the unit, such administrative duties demand very little of the nurses' time.

The nurses are in charge of the non-professional employees within the intensive care unit. With respect to those employees, the RNs make patient assignments, conduct in-service training, and see that the work is done satisfactorily. One staff nurse testified that she had once recommended that an employee be retained as a permanent employee within the unit. However, the record as a whole indicates that the nurses of the intensive care unit play no role in the hiring and firing of employees. Although the head nurse and the assistant head nurse of the unit evaluates the non-professional employees of the unit, there is no evidence as to what weight such evaluations are given in granting pay increases or promotions.

Obstetrics Unit

The obstetrics unit operates on a three-shift, 24-hour basis. Each shift consists of three nurses aides and one to two LPNs. The only registered nurse assigned to the unit has the title of O.B. supervisor and is in charge of the overall operation of the obstetrics unit. Because the non-professional employees are adequately trained, there is little need for constant supervision. The O.B. supervisor is responsible for the overall patient care including assisting in deliveries, and other nursing functions. The O.B. supervisor's administrative duties include preparing monthly schedules and daily patient assignments for the non-professional members of her shift. The LPNs are in charge of patient assignments on their shifts. The O.B. supervisor also gives initial approval to vacation and leave of absence requests which are accepted or rejected by the director of nursing. As in the other hospital units, the approval given by the O.B. supervisor is usually determined by the ability to adequately staff the obstetrics unit.

The O.B. supervisor does not hire or recommend the hiring of employees. On one occasion an O.B. supervisor verbally recommended that an employee be discharged. However, there is nothing in the record to suggest that such recommendations are normally followed. The O.B. supervisor can verbally reprimand an employee and can prepare employee reports in connection with disciplinary problems.

The O.B. supervisor periodically evaluates non-professional employees in her unit and often discussed such reports with the director and assistant director of nursing. The O.B. supervisor can made recommendations concerning employee wage increases, but it is not clear that said recommendations are often followed by the director of nursing, who makes the final determination concerning the wage increase.

Wages in General

The director of nursing, assistant director, and house supervisors are salaried employees. The Employer contends that the O.R. supervisor also receives a salary. However, testimony of the personnel director established that the O.R. supervisor in fact receives an hourly wage. All employees of the Nursing Services Department below the house supervisors are paid by the hour. The wage rates of the RNs are based on a number of factors including seniority, merit increases, training, and shift differentials. The wage ranges of the various positions are as follows: Staff Nurse, \$5.15 to \$7.11; Head Nurse \$5.55 to \$7.66; House Supervisors, a salary that amounts to \$5.85 to \$8.07 per hour; Assistant Director of Nursing, a salary that amounts to \$6.45 to \$8.90 per hour.

CONCLUSIONS OF LAW

The Golden Valley Registered Nurses Association filed a petition for certification as the public employee representative of a bargaining unit consisting of approximately

26 registered nurses (RN's) employed by the Golden Valley Memorial Hospital District (Employer). The employer contends that a number of RN's within the proposed bargaining unit are supervisors and thus should be excluded.

The State Board of Mediation recognizes that certain employees possess sufficient supervisory status to warrant their exclusion from a bargaining unit of other employees. In St. Charles Professional Firefighters Local 1921 v. City of St. Charles, Public Case No. 79-024; and IBEW Local 1439 AFL-CIO v. City of Piedmont, Public Case No. 79-044, among other cases, this Board has articulated factors to consider in determining the supervisory status of employees. The effort is to determine whether a particular employee is a true "supervisor", whose duties involve acting directly or indirectly in the interest of the employer in relation to other employees or whether the employee is merely a working foreman whose responsibilities would not justify exclusion from an appropriate bargaining unit. The factors to be considered in reaching this determination include (1) the authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees; (2) the authority to direct and assign the work force including a consideration of the amount of independent judgment or discretion involved in such decisions; (3) the number of employees supervised and the number of other persons exercising greater, similar or lesser authority with respect to the same employees; (4) the level of pay, including an evaluation of whether a person is paid for his or her skill or for his or her supervision of other employees; (5) whether a person primarily supervises an activity or primarily supervises other employees; (6) whether a person is a working supervisor or whether he or she spends a substantial majority of work time overseeing others.

In Golden Valley Memorial Hospital District v. Missouri State Board of Mediation, 559 S.W.2d 581 (Mo.App., K.C.D. 1977) the court directed this Board to resolve the issue of the supervisory status of RN's employed by the Golden Valley Memorial Hospital District. Specifically, the board was to identify those employees whose duties

involved acting in the interest of the employer. An application of the factors recited above to the facts of this case follows:

Assistant Director of Nursing. The board concludes that the assistant director of nursing is a supervisor that should be excluded from the bargaining unit. The assistant director of nursing is second in command to the director of nursing and assists the director in formulating hospital policies and procedures. The assistant director is responsible for coordinating patient care activities within the hospital for all shifts. The assistant director plays a significant role in the hiring, firing and disciplining of employees. She is a salaried employee receiving substantially higher pay than other employees.

House Supervisors. House supervisors also possess sufficient supervisory authority to justify their exclusion from the bargaining unit. The house supervisors are in charge of all employees working on their shift. They use independent judgment in directing and assigning the work force. Although the house supervisor does provide patient care i.e. preparing meals for late arriving patients and making rounds with doctors --- it is clear that the majority of the house supervisor's time is spent in an administrative capacity assuring that each department of the hospital functions properly during her shift. The house supervisor determines whether an employee should be transferred to another unit to adequately staff all of the hospital departments. House supervisors are salaried and receive higher pay than the average pay for staff nurses.

Relief House Supervisors. The record discloses that employees designated "relief house supervisors" actually serve as house supervisors approximately two days a week. On other days, those nurses work as staff nurses.

In Professional Firefighters of Marshall, Local 2706 IAFF v. City of Marshall, Public Case No. 79-036, this Board stated that an employee should be considered a supervisor only if the employee's supervisory duties are of a permanent nature or cover a substantial period of time on the job. We find that since the bulk of the relief house

supervisor's time is spent in the capacity as staff nurse, the relief house supervisor cannot be deemed a true supervisor for purposes of the bargaining unit determination. In addition, the relief house supervisors are paid hourly wages in contrast to the salaries paid house supervisors. With regard to contention of the employer that the relief house supervisor in the capacity as staff nurse has authority to assign and evaluate employees, the Board adopts the reasoning more fully expressed below to the effect that such authority is not sufficient to warrant the treatment of the staff nurses as supervisors.

Head Nurses. Five RN's are employed as head nurses, one in each of the following units --- Third Floor Post Op Unit, Second Floor Unit, Emergency Room Recovery Room, and Intensive Care Unit. The functions of the head nurses in each of those units are essentially the same. The question concerning the supervisory status of the head nurses is less clear than the status of the assistant director and house supervisor described above. Therefore the Board will examine each of the factors surrounding its determination in some detail. (1) The authority to effectively recommend the hiring, promotion, transfer, discipline or discharge of employees: There is insufficient evidence to warrant the conclusion that head nurses have the authority to make effective recommendations concerning the hiring of employees. Although the record indicates that on isolated occasions a recommendation concerning the hiring of an employee was followed, the ultimate responsibility is with the assistant director and director of nursing.

The head nurses are required to prepare periodic evaluations of employees. The evaluations consist of the nurse's professional judgment concerning whether employees in the unit are providing adequate patient care. This does not suffice to establish a supervisory status of the head nurses. Geriatrics, Inc., 239 NLRB 34, 99 LRRM 1606, 1607 (1978); Texas Instruments for Rehabilitation and Research, 228 NLRB 578, 94 LRRM 1513, 1516 (1977). Although the head nurses have some input with regard to

decisions concerning whether probationary employees will be retained or whether an employee will get a merit increase, the Board finds that the head nurses' recommendations in these areas are not dispositive. Factors such as seniority and budget limitations play an important role in determining whether a pay increase is provided. Again, the assistant director and director are responsible for the promotion of employees.

With regard to transfers, the record indicates that only house supervisors and the director of nursing have the authority to make temporary or permanent transfers. The head nurses have no authority to transfer employees outside of their respective unit. The fact that on one occasion the head nurse of the Third Floor Post Op Unit successfully recommended that an employee be transferred does not alter this conclusion.

When disciplinary problems arise, head nurses may verbally reprimand employees or issue written reports recommending suspension or discharge. However, disciplinary action is only imposed after the director of nursing or assistant director makes an independent investigation of the facts of the case.

2. The authority to direct and assign the work force, including a consideration of the amount of independent judgment and discretion exercised in such matters: It is undisputed that the head nurses direct and assign employees within their units. The head nurse of the second and third floor units make patient assignments to the staff nurse working their shifts. As team leaders, the head nurse directs the non-professional members of the team. The emergency room, recovery room, and intensive care unit head nurses must also direct and assign the non-professional members of their staffs. Also, as head nurses, each is responsible for maintaining time schedules for all shifts of their departments. However, such authority does not necessarily ascribe supervisory status to the head nurses. This Board finds persuasive the approach taken by the NLRB which has dealt with health industry labor problems since 1974. The NLRB has

been careful not to apply the definition of "supervisor" to a health care professional who gives direction to other employees which is only incidental to the treatment of patients. Wing Memorial Hospital, 217 NLRB 1015, 89 LRRM 1183, 1184 (1975). The NLRB will not consider RNs supervisors if their authority to direct and assign employees is more an exercise of professional judgment incidental to patient care rather than the exercise of supervisory authority in the employer's interest. Geriatrics, Inc., 239 NLRB 34, LRRM 106, 1608 (1978). In our case the authority exercised by the head nurse in making patient assignments, scheduling, etc., are all directly related to providing adequate patient care. It is clear that the authority exercised in directing other employees is more a result of the head nurse's professional judgment exercised in providing patient care rather than the exercise of supervisory authority in behalf of the Employer. Accordingly, the head nurses cannot be considered supervisors because of their authority to direct other employees. Instead, the authority exercised is closer to that of a "leadman" rather than a true supervisor.

3. The number of employees supervised, and the number of other persons exercising greater, similar or less authority over the same employees: Even though the head nurse exercises more authority than other members within her unit, a house supervisor, to which the head nurse is responsible is on duty during all shifts. Therefore, there is no time when the head nurse is without a person with more authority at the hospital. Further, during certain shifts the director of nursing and assistant director are present.

4. The level of pay, including an evaluation of whether the supervisor is paid for his or her skill or for his or her supervision of employees. Unlike the director, assistant director and house supervisors which are salaried employees, the head nurses receive an hourly wage. The average wage rate of head nurses is approximately \$.40 more per hour than regular staff nurses. It is not clear from the record whether the head nurses' pay is generally greater because of additional duties associated with the job or because

the head nurse possesses more seniority or professional skill than staff nurses. Some staff nurses receive greater pay than head nurses. From this the Board concludes that factors other than supervisory responsibilities such as seniority must play an important role in determining the wage rate for a particular head nurse.

5. Whether the supervisor is primarily supervising the activity or primarily supervising employees. Head nurses provide patient care and assure that other members of the nursing team perform their duties satisfactorily. Because of the active involvement of the head nurses in performing routine nursing duties, the Board concludes that any oversight function with regard to other employees is incidental and in the process of supervising an activity, patient care, rather than supervising the work of particular employees.

6. Whether the supervisor is a working supervisor or whether he or she spends a substantial majority of time merely overseeing employees. In addition to the reasons expressed in the discussion of factor No. 5, the Board concludes that head nurses serve as working supervisors. The testimony establishes that the head nurses spend a substantial majority of their time performing nursing functions. The third floor head nurse estimated that 75% of her time was devoted to nursing duties. The emergency room head nurse stated that she spent most of her time starting I.V.'s, administering medication and providing services while riding in the ambulance. She estimated that approximately 15% of time was spent on administrative chores. The other head nurses reached similar conclusions concerning the extent of time required to perform their administrative duties.

O.B. Supervisor, O.R. Supervisor. The Board finds that the duties of the O.B. Supervisor who is in charge of obstetrics unit and O.R. Supervisor in charge of the operating room staff are essentially the same as those duties performed by head nurses. Accordingly the discussion pertaining to head nurses is applicable to these nurses. The Board concludes that O.B. Supervisors and O.R. Supervisors are not

supervisors acting on behalf of the employer so as to justify their exclusion from the bargaining unit.

Circulating Nurse in Surgery. The Employer contends that the circulating nurse in surgery is a supervisor. The Employer points out that this RN supervises non-professional employees working in the operating room to which she is assigned. Also, the RN testified that she could effectively recommend the hiring, firing, and discipline of those employees. We find the Employer's argument unpersuasive. The record as a whole indicates that recommendations made by the circulating nurse are not likely to be followed unless someone with higher authority makes an independent determination concerning such matters. Further, any assignment or direction given to a non-professional is merely incidental to her professional judgment concerning patient care. Additionally, the circulating nurse is subordinate to both the O.R. supervisor and the assistant surgery supervisor (a position vacant at the time of the 1978 hearings). Because those positions are not considered supervisory, it follows that the circulating nurse should not be regarded as a supervisor.

Intensive Care Unit Assistant Head Nurse and Staff Nurse. The Employer asserts that the intensive care unit staff nurse is a supervisor because she is paid as a head nurse and because she is the RN in charge of the evening shift. Testimony of a staff nurse that has worked in all three intensive care unit RN positions --- head nurse, assistant head nurse, and staff nurse --- establishes that there is no material difference between the duties of the RNs in each position. The head nurse of that department, for reasons set out above, was not considered a supervisor. The Board concludes that the other intensive care unit RNs, would possess at most authority equal to that of the head nurse, cannot be considered supervisors.

The Employer asserts a number of additional reasons why the Association should not be certified as the exclusive bargaining representative of the RNs. First, Employer argues that because the Association is dominated by supervisors, it cannot be

permitted to represent the employees. Because the Board has concluded that the RNs involved in the organization of the Association are not supervisors, this argument is rendered moot.

Second, the Employer contends that because the Association's Constitution contains provisions allowing strikes, public policy demands that the Association be denied representative status. Although the Board emphasizes that certification of the Association in no way condones the use of strikes in Missouri public sector labor disputes, we find that such a contingent provision in the Association's Constitution has no bearing on the representative status of the Association.

Third, the Employer maintains that the certification of a unit comprised solely of RNs would result in an undue proliferation of bargaining units that would be detrimental to hospital administration. While the Board is unaware of the need to avoid the undue proliferation of bargaining units, there is no danger of such overfragmentation in this case. The NLRB approach to the health care industry bargaining units is instructive in this respect, having consistently recognized RN-only units. Mercy Hospitals, Inc., 217 NLRB 765, 89 LRRM 1097 (1975). We do not feel that the certification of a RN-only unit imposes too great a burden upon the Employer. Given the "clear and identifiable" community of interest among the RNs, and that the RNs' duties, qualifications, and training are quite different from those of other hospital employees, we must conclude that a unit consisting of RNs only is an appropriate unit within the meaning of Section 105.500 (1), RSMo 1978.

Fourth, the Employer asserts that the RNs in question need to be considered supervisors in order to maintain accreditation with Medicare and the state licensing authority. We disagree. The Board's definition of "supervisor" is applicable only to the bargaining unit issue and should have no effect on state licensing or Medicare status.

Finally, the Employer claims that it was not afforded an impartial hearing in 1975 due to alleged bias of certain Board members. Without considering whether such bias

actually existed, this Board concludes that because the hearing was reopened in 1978 with new Board members presiding and participating in the decision, the Employer has not suffered any prejudice.

DECISION

It is the decision of the State Board of Mediation that an appropriate unit of employees is as follows:

All registered professional nurses within the employment classifications of relief house supervisor, obstetrics supervisor, surgery supervisor, assistant surgery supervisor, head nurse, assistant head nurse, and staff nurse, (but excluding the employment classifications of assistant director of nursing services and house supervisors), all within the employment of the Nursing Services Department of Respondent, Golden Valley Memorial Hospital.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation among the employees in the unit found appropriate, as early as possible, but no later than sixty (60) days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during that period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election date. Those eligible to vote shall vote whether (or not) they desire to be represented for the purpose of exclusive recognition by Petitioner, Golden Valley Registered Nurses Association.

It is hereby ordered that the Respondent shall submit to the Chairman of the State Board of Mediation, as well as to the Petitioner, within fourteen (14) days from the

date of receipt of this decision, an alphabetical list of the names and addresses of employees in the unit determined above to be appropriate who were employed during the designated payroll period.

Signed this 14th day of July, 1980.

MISSOURI STATE BOARD OF MEDIATION

(SEAL)

/s/ Conrad L. Berry
Conrad L. Berry, Chairman

/s/ Robert Missey
Robert Missey, Employee Member